IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7277 of 1998
With
SPECIAL CIVIL APPLICATION No. 7279 of 1998
To
SPECIAL CIVIL APPLICATION No. 7280 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PORBANDAR MUNICIPALITY - Petitioner(s)

Versus

MULSHANKAR B MODHA - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Petitioner(s) : 1,
MR ND SONGARA for Respondent(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,
MR NIRDOSH H RATHOD for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 21/01/2006

COMMON CAV JUDGMENT

1. Since the common question of law and facts is

involved in these petitions and with the consent of the learned advocates appearing for the parties, the present petitions are being disposed of by this common order.

2. The present petitions have been directed against the common judgment and award dated passed by the Labour Court, Junagadh dated 19.3.1998 in Reference (LCJ) No. 1879 of 1990, 1880 of 1990 and 189 of 1991, by which the Labour Court has directed the petitioner – Porbandar Municipality to reinstate the respondents on their original post with continuity of service forthwith and also directed to pay 60% back wages for the intervening period.

3. It can be seen from the record that the respondents were working with the petitioner – Municipality as conductors since round about 20 years. It can be noticed that because of the misconduct of non-issuance of tickets, the respondents were served with the show cause notice dated 7.3.1990 and thereafter, the regular departmental inquiries were held and conducted against the respondents and ultimately the services of the respondents came to be terminated by the petitioner – Municipality. It can also be noticed that thereafter, the respondents have tendered apology for misconduct in

writing and in view of the said apology being tendered by the respondents before the petitioner – Municipality, the settlement arrived at between the parties and in view of the same, the petitioner reinstated the respondents in service on 3.7.1990. After the reinstatement, the respondents filed a civil suit being Civil Suit No. 250 of 1990 before the Civil Court for the relief directing the petitioner to pay 2 months salary. It also appears that because of filing the civil suit by the respondents, the petitioner has terminated the services of the respondents vide order dated 15.9.1990.

4. Ultimately, the respondents raised the industrial dispute which came to be registered as Reference (LCJ) Nos. 1879 of 1990, 1880 of 1990 and 189 of 1991 before the Labour Court, Junagadh. After considering the oral and documentary evidence on record, the Labour Court, Junagadh by its judgment and award dated 19.3.1988, was pleased to hold that the termination of the respondents is illegal and, therefore, directed the petitioner to reinstate the respondents to their original post with continuity of service and further directed to pay 60% back wages for the intervening period.

5. Being aggrieved and dissatisfied by the said judgment and award dated 19.3.1988 passed by the Labour Court, Junagadh in Reference (LCJ) Nos. 1879 of 1990, 1880 of 1990 and 189 of 1991, the petitioner – Municipality has preferred Special Civil Application Nos. 7277 of 1998, 7279 of 1998 and 7880 of 1998 before this Court under Article 227 of the Constitution of India.

6. Heard the learned advocates for the parties.

7. This Court (Coram : H.L.Gokhle, J), vide order dated 12.10.1990 directed the petitioner – Municipality to reinstate the respondents in service by 16.10.1998 and stayed the back wages. However, the said reinstatement was subject to the final outcome of these petitions.

8. Accordingly, the respondents have been reinstated in service with effect from 16.10.1998. The Labour Court, has specifically come to the conclusion, that the respondents have filed the civil suit on 30.8.1990 and thereafter their services have been terminated on 15.9.1990 and because of filing the civil suit, their service have been terminated. The Labour Court has also recorded the finding that after reinstatement in service and till the termination of

service vide order dated 15.9.1990, there was no departmental inquiry pending against the respondents or the charge sheet was served upon the respondents because earlier the settlement was arrived at between the parties. The Labour Court has also come to the conclusion that as admitted by the Municipality, the respondents have committed breach of the conditions of the settlement arrived at between the parties after they have been reinstated in service and because of filing of the civil suit, there is a breach of the condition of the settlement and, therefore, the Municipality has terminated the services of the respondent. Therefore, the Labour Court has held that the said action of the petitioner – Municipality is illegal and in breach of principles of natural justice. The Labour Court has also recorded that the petitioner – Municipality has not produced the service book or the past record or any documentary evidence in respect of the respondents and has merely relied upon the oral evidence. The Labour Court, after appreciating the oral as well as documentary evidence on record, has held that the action of the petitioner – Municipality in terminating the services of the respondents is illegal and the respondents are entitled to reinstatement in service with continuity of service and considering the record available on record as

well as the apology tendered for the misconduct as alleged against the respondents, the Labour Court has directed the petitioner to pay 60% back wages for the intervening period.

9. Under the aforesaid circumstances, the Labour Court, after considering all the documentary as well as oral evidence, has rightly come to the conclusion that the order of termination is illegal and, therefore, the said order has been quashed and set aside by the lower Court. Further, this is not a case where this Court can exercise the powers under Article 227 of the Constitution of India in favour of the petitioner. In view of the fact that there is no jurisdictional error committed by the Lower Court while passing the impugned judgment and award, this Court cannot sit in appeal and interfere with the findings of fact and reappreciate the evidence. A mere wrong decision does not cloth the High Court with the jurisdiction unless it is shown that the Labour Court has reached the decision without any evidence in support of the same or that it has considered evidence which is partly relevant and partly irrelevant or that it arrived at the decision no reasonable person would have reached. None of the aforesaid factors exist in the present case so as to warrant any interference in exercise of the

powers under Article 227 of the Constitution of India.

10. In view of the aforesaid discussion, I do not find any substance in the present petitions. Therefore, the same are required to be dismissed. Accordingly, these petitions are dismissed. The impugned judgment and award passed by the Labour Court, Junagadh dated 19.3.1998 in Reference (LCJ) Nos.1879 of 1990, 1880 of 1990 and 189 of 1991 are hereby confirmed. Rule is discharged in each of the petitions. No costs.

(SHARAD D DAVE, J)

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